

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AUSTIN RICHARD MOORES NELSON,

Petitioner,

v.

DANIEL WHITE,

Respondent.

Case No. C22-5363-BJR-MLP

ORDER

This is a federal habeas action filed pursuant to 28 U.S.C. § 2254. This matter comes before the Court on Petitioner’s motion for appointment of counsel. (Dkt. # 23.) Petitioner contends he is “not able to understand nor comprehend the intricate and complicated issue of exhaustion argued by the respondents,” citing “a learning disability.” (*Id.* at 2.) In an accompanying declaration, Petitioner states he has been “having other inmates help [him] get a[n] understanding of the complicated legal issues[.]” (Dkt. # 24 at 1.) He states he “[does not] know how long there will be other people to help [him].” (*Id.* at 2.)

There is no right to have counsel appointed in cases brought under 28 U.S.C. § 2254 unless an evidentiary hearing is required, or counsel is necessary for effective discovery. *See Terravona v. Kincheloe*, 852 F.2d 424, 429 (9th Cir. 1988); *Brown v. Vasquez*, 952 F.2d 1164,

1 1168 (9th Cir. 1992); Rules Governing Section 2254 Cases in the United States District Courts
2 6(a) and 8(c). The Court may request an attorney to represent indigent civil litigants under 28
3 U.S.C. § 1915(e)(1) but should do so only under “exceptional circumstances.” *Agyeman v.*
4 *Corrections Corp. of Am.*, 390 F.3d 1101, 1103 (9th Cir. 2004). “A finding of exceptional
5 circumstances requires an evaluation of both the likelihood of success on the merits and the
6 ability of the [petitioner] to articulate his claims *pro se* in light of the complexity of the legal
7 issues involved.” *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986). These factors
8 must be viewed together before reaching a decision on a request for counsel under
9 § 1915(e)(1). *Id.* In addition, the Court may exercise its discretion to appoint counsel for a
10 financially eligible individual where the “interests of justice so require.” 18 U.S.C. § 3006A.

11 Here, the record is not yet sufficiently developed for the Court to determine whether an
12 evidentiary hearing or discovery will be required. Furthermore, Petitioner has not demonstrated
13 that exceptional circumstances exist. Petitioner fails to demonstrate that his case is legally or
14 factually complex. It is clear from Petitioner’s filings to this point that he is capable of clearly
15 articulating his claims and arguments *pro se*. (See dkt. ## 3, 7.) The Court notes that Petitioner
16 has ably represented himself thus far in the litigation with the resources he has been able to
17 access.

18 As for Petitioner’s likelihood of success on the merits, Petitioner’s motion fails to make
19 any argument or showing demonstrating that he is likely to prevail on the merits of his habeas
20 petition or that the “interests of justice” are best served by appointment of counsel.

21 Accordingly, the Court hereby DENIES Petitioner’s motion for appointment of counsel
22 (dkt. # 23). The Clerk is directed to send copies of this order to the parties and to the Honorable
23 Barbara J. Rothstein.

1 Dated this 31st day of October, 2022.

2 

3 MICHELLE L. PETERSON
4 United States Magistrate Judge